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C O N F I D E N T I A L SECTION 01 OF 02 BAKU 000574

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SUBJECT: AZERBAIJAN: UPDATE ON DETAINED FORMER MINISTER
FARHAD ALIYEV

REF: BAKU 328

Classified By: Ambassador Reno L. Harnish III for Reasons 1.4 b and d.

¶1. (C) Summary. Lawyers for jailed ex-Minister Farhad Aliyev report that his health continues to deteriorate due to inadequate GOAJ medical care; they also claim that the GOAJ has been criminally negligent in its medical treatment of Aliyev. ICRC, which has regular access to Aliyev and the rest of the alleged coup-plotters, reports that Aliyev is receiving regular, substantial medical care, including access to prescription medication from Germany and regular visits by local cardiologists. ICRC warns, however, that Aliyev's pre-existing heart condition makes him vulnerable to a sudden heart attack. Separately, Aliyev's British lawyer Anthony Lester plans to appeal directly to President Aliyev to release Farhad Aliyev on medical grounds. Should that fail, Lester plans to pursue an emergency injunction against Azerbaijan in the European Court of Human Rights and press for a condemnation of Azerbaijan at the June session of PACE. Local lawyers report that the the GOAJ appears to be dropping the coup-plotting charges in favor of corruption charges. We continue to urge the GOAJ to respect the rule of law in this and all other criminal cases. End Summary.

ALIYEV'S LAWYERS: NEGLIGENT MEDICAL CARE VIOLATES HUMAN RIGHTS...

¶2. (C) Farhad Aliyev's British lawyer, Anthony Lester told the Ambassador April 6 that Aliyev's health, though not dire, has deteriorated in the past month. Lester - who has not had access to Aliyev in detention - reported poorly trained prison doctors who lack specific cardiology training have failed to provide Aliyev with adequate care in violation of Azerbaijan's obligations under European Convention on Human Rights. Lester argued that Aliyev's condition has gotten progressively as a result of the poor health care. Lester's assessment of Aliyev's health was seconded by human rights monitor Elchin Behbutov who recently visited the MNS detention facility and reported that Aliyev appeared physically run-down in contrast to previous visits. In a separate April 9 meeting with Poloff, Irada Javadova, one of Aliyev's local lawyers, described Aliyev's fluctuating health as a crime of medical negligence and a human rights violation. Javadova further contended that the authorities were administering unknown drugs to Aliyev, and intentionally mistreating her client only to administer numerous injections to stave of death. (Lester did not make this claim.)

ICRC: LAWYERS INTENTIONALLY MISTATING GOAJ MEDICAL TREATMENT

¶3. (C) ICRC chief of mission Mary Werntz (protect) and senior

protection officer Jean Paul Corboz (protect) told Poloff April 12 that they believe Aliyev's lawyers were overstating claims of GOAJ medical negligence as part of their legal advocacy strategy. Based their regular access to Aliyev, it was clear to the ICRC that the authorities were allowing him medical privileges not granted to ordinary prisoners. ICRC reported that contrary to the lawyers' claims, Aliyev was receiving his prescribed heart and blood pressure medication imported from Germany, which were administered daily. A cardiologist from the nearby Central Clinical hospital (regarded as one of the better facilities in Baku) was performing electrocardiograms on a regular basis to monitor his heart; he also maintains an extensive medical file on Aliyev's condition to which the ICRC has had access. Nonetheless, Werntz stated that the quality of care Aliyev was receiving was certainly lower than what he would have received privately in Germany, because healthcare in Azerbaijan is generally poor and unprofessional, not because the doctors were attempting to harm Aliyev in jail. Werntz noted that medical experts with whom the ICRC has spoken agree that Aliyev has a heart condition (predating his detention) and is a prime candidate for a heart attack given the high stress of his circumstances.

14. (C) Privately, Werntz added, the case was placing the ICRC in the awkward position of seeming to defend the rights of one person who was receiving better medical treatment than the overwhelming majority of Azerbaijani citizens in detention. The human rights violation, Werntz opined, was in the legality of the charges against Aliyev and the other detainees and the absence of due process, not in the treatment administered by the GOAJ in detention. Werntz added that the GOAJ could quickly face a political catastrophe should Aliyev die of a heart attack in detention. Werntz

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indicated the ICRC would seek a medical accounting from the GOAJ of the care granted to all detainees and would continue to regularly visit the group conveying any objections or concerns directly to the GOAJ.

LESTER'S STRATEGY

15. (C) Lester, who is also now representing Aliyev's brother former AzPetrol chairman Rafiq Aliyev, plans a two-pronged legal strategy. First, he plans to seek a settlement through face-to-face talks with President Aliyev during his next visit to Baku in early June. Lester told us he hopes to convince Aliyev that Farhad, President Aliyev's childhood friend and near brother, was fully loyal to the President, that the evidence of a coup plot was fabricated, and that Aliyev's failing health justified his early release. Lester said that it is in Ilham Aliyev's political interest to resolve this case to avoid further damage to Azerbaijan's international reputation.

16. (C) The GOAJ, Lester argued does not have a case against Farhad Aliyev and even less of a case against his brother Rafiq. It is now grasping at straws to find evidence on which to prosecute them. Lester added that Aliyev's local lawyers believed the GOAJ was shifting its prosecution strategy away from the coup charges toward a focus on corruption, charges on which almost any GOAJ official could be prosecuted. Javadova told Poloff that in her meetings with GOAJ's prosecutors, it was evident that the Government had uncovered no evidence of a coup plot. Instead, Javadova reported, prosecutors regularly cited "signed" statements of Aliyev's former business associates alleging corruption and misconduct. Javadova reported that the Prosecutor General was no longer conducting a criminal investigation but rather was stalling for time by raising low-level claims against her client that Aliyev's attorneys were forced pursue. (Recent GOAJ interest in developing a plea bargain system has raised speculation in Baku's legal community that the GOAJ plans to use plea bargains to develop a case against Aliyev.)

17. (C) Lester told us that should the GOAJ refuse to settle the case in June, he will immediately take the case public in an effort to force an agreement. Lester will first petition the European Court of Human Rights (ECHR) on an emergency basis to seek an injunction against the GOAJ for failing to fulfill Azerbaijan's ECHR obligation to protect human life. Second, Lester will take Aliyev's case to the Parliamentary Assembly of the Council of Europe (PACE), through members of parliaments with whom he has been in contact. At the PACE June session, Lester plans for the MPs to raise the Aliyev detention as evidence of Azerbaijan's poor human rights record. (In an April 10 message to the Ambassador, Lester told us that he plans to write members of Congress to urge them to raise the case with President Aliyev during his upcoming visit to Washington.) Separately, Lester noted that the Dutch office of attorneys Clifford Chance were going forward with arbitration proceedings in a London court of arbitration and at the World Bank concerning the corporate assets seized at the time of the Aliyev brothers' arrest.

COMMENT

18. (C) We trust ICRC's evaluation of Aliyev's medical condition and the care that he is receiving while in GOAJ detention. We will continue to urge the GOAJ to ensure appropriate medical treatment for all detainees, including Aliyev, and will continue to carefully monitor reports on his health. We also will continue to urge the GOAJ to respect the rule of law, i.e. move to an early trial conducted on a fair basis.

HARNISH